

the need for the variances is due to the illegal commercial activity being conducted from the premises rather than the use of the property for residential purposes as zoned. The Petitioners have failed to show that compliance would unreasonably prevent the use of the property or be unnecessarily burdensome. Therefore, the variances requested must be denied.

In light of Petitioners' failure to meet their burden regarding the variance requirements of Section 307 of the Baltimore County Zoning Regulations (B.C.Z.R.), an examination of whether or not the relief requested is in harmony with the general spirit and intent of the Chesapeake Bay Critical Areas legislation for Baltimore County and conforms to the requirements set forth in Section 500.14 of the B.C.Z.R. need not be undertaken.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be denied.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 14th day of March, 1990 that the Petition for Zoning Variance to permit a rear yard setback of 15 feet in lieu of the required 30 feet for a proposed addition, a lot line setback of 0 feet in lieu of the minimum required 2.5 feet for existing sheds and garage, and to permit 14 sheds and garage to be located in the closest one-third of the rear yard from the nearest street and to occupy more than 50% of the closest rear yard, in lieu of the farthest removed rear one-third and maximum permitted 50% rear yard occupancy, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED.

ANN:bjs

IN RE: PETITION FOR ZONING VARIANCE  
SE/8 Eastern Avenue, 930' SW of  
Oliver Beach Road  
(12913 Eastern Avenue)  
15th Election District  
5th Councilmanic District

BEFORE THE  
DEPUTY ZONING COMMISSIONER  
OF BALTIMORE COUNTY  
Case No. 90-254-A

Gerald Kestner, et ux  
Petitioner

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Petitioner herein requests a variance to permit a rear yard setback of 15 feet in lieu of the required 30 feet for a proposed addition, a lot line setback of 0 feet in lieu of the minimum required 2.5 feet for existing sheds and garage, and to permit 14 sheds and garage to be located in the closest one-third of the rear yard from the nearest street and to occupy more than 50% of the closest rear yard, in lieu of the farthest removed rear one-third and maximum permitted 50% rear yard occupancy, as more particularly described in Petitioner's Exhibit 1.

The Petitioners, by Barbara Kestner, appeared and testified. Also appearing on behalf of the Petition was James Morrow with Patio Enclosures, Inc., Contractor. There were no Protestants.

Testimony indicated that the subject property, known as 12913 Eastern Avenue, consists of .49 acres zoned D.R. 5.5 and is improved with a single family dwelling, detached garage, swimming pool and sheds. Said property is located within the Chesapeake Bay Critical Areas near Cunningham Cove. Petitioners are desirous of enclosing an existing patio on the northeast side of the existing dwelling to provide more habitable space and a sitting area free from the effects of inclement weather or insects. Testimony indicated that due to the layout of the dwelling and the location of existing improvements thereon, the variance requested is necessary.

**PETITION FOR ZONING VARIANCE**  
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: **90-254-A**

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1802.3.B. and 400.1 To permit a 15' rear yard setback (proposed addition), 0' lot line setbacks (existing sheds & garage) and to permit 14 sheds and garage to be located in the closest one-third of the rear yard from the nearest street, and occupying more than 50% of that third (existing sheds, garage & pool) in lieu of 30', 2 1/2', farthest third, maximum 50%, respectively, of the Zoning Regulations of Baltimore County to the Zoning Law of Baltimore County, for the following reasons: (Indicate hardship or traction difficulty)

1. This area lends itself to the utilization of existing facilities and land without interruption or major alterations to the present floor plan patterns.
2. Insulate and reduce heating bills.
3. Reduce outside noise.
4. A place to sit out and not be concerned with the weather, bugs, mosquitoes, flies, etc.
5. Improve appearance of house.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser: \_\_\_\_\_  
(Type or Print Name)

Signature: \_\_\_\_\_  
(Type or Print Name)

Address: \_\_\_\_\_  
City and State: \_\_\_\_\_

Attorney for Petitioner: \_\_\_\_\_  
(Type or Print Name)

Address: \_\_\_\_\_  
City and State: \_\_\_\_\_

Attorney's Telephone No.: \_\_\_\_\_

ORDERED By The Zoning Commissioner of Baltimore County, this 11th day of March, 1990, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 108, County Office Building in Towson, Baltimore County, on the 20th day of March, 1990, at 2 o'clock P.M.

J. Robert Hines  
Zoning Commissioner of Baltimore County

ESTIMATED LENGTH OF HEARING (1/2 HR) AVAILABLE FOR HEARING MON./TUES./WED. - NEXT TWO WEEKS OTHERS 1/2 HR

REVIEWED BY: 774K DATE 7/2/91

Mrs. Kestner testified that upon application for a building permit, Petitioners were advised that a variance would be needed for the currently existing sheds and garage as well as all the proposed improvements to the property. No testimony was presented as to the necessity for the variances needed as a result of the sheds placed on the property without permits.

At the end of the hearing, Petitioner was requested to provide pictures of all existing improvements on the property prior to a decision being rendered.

Subsequent to the hearing, Petitioner telephoned the office and expressed concerns about submitting the pictures depicting all improvements. Petitioner was advised by staff that as requested, it was necessary that said pictures be provided. Thereafter, Petitioner submitted pictures which simply showed the house and a view from the porch which would be enclosed. A site inspection of the premises indicated that the variances for the sheds and garage, perhaps as presently used, are inappropriate. On the day of the inspection, a commercial vehicle with the lettering "B and J Sweeping Service, 335-7866" was parked on the property and other street sweeping equipment was being stored outside the garage. Further, an additional accessory structure (skateboard ramp) was located in the front yard which was not noted on the site plan. These facts coupled with Petitioner's lack of any evidence to support the need for the variances for the sheds and garage necessitate a denial of Petitioners' request. Further, while the garage in and of itself may not be inappropriate, the facts, lack of evidence to support the request, and the evidence of the potential abuse of the use of the subject property for commercial activity requires a denial of the variance requested for the garage at this time. Petitioners need to address in greater detail the location of the garage

**PETITION FOR ZONING VARIANCE**  
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: **90-254-A**

LEGAL DESCRIPTION OF PROPERTY

Beginning on the South East side of Eastern Ave. At the distance of 930 feet, Southwest of the center line of Oliver Beach Rd.

Being a part of Lot 100, Twin River Beach, as shown on a plat of subdivision entitled "Twin River Beach, Section B", recorded among the Land Records of Baltimore County, Maryland in Plat Book W.P.C. 8 at Folio 20.

Also known as 12913 Eastern Ave. In the 15th election district.

**CERTIFICATE OF POSTING**  
ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District: 15th  
Posted for: Variance  
Petitioner: Gerald Kestner et ux  
Location of property: SE/8 Eastern Ave., 930' SW of Oliver Beach Rd., 12913 Eastern Ave.  
Location of Sign: Front of Eastern Ave., near 6th St. and Oliver Beach Rd.  
Remarks: 1/2 hr  
Posted by: 774K  
Date of return: 11/1/90

in the right-of-way and not within the property lines. Perhaps Petitioners' request regarding the garage may be better addressed after the property is brought into compliance with the zoning regulations. By ceasing all commercial activity from the premises, and removing the commercial vehicles equipment and those sheds which were placed on the property without permits Petitioners' request can be more favorably examined. To permit the rear yard variances at this time for the enclosure of the porch might result in encouraging additional commercial activity on the property.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

After due consideration of the testimony and evidence presented, there is insufficient evidence to allow a finding that the Petitioners would experience practical difficulty or unreasonable hardship if the requested variance were denied. The testimony presented by Petitioners was in support of a matter of preference rather than of the necessity for the variance. Further, the evidence presented creates an inference that

**CERTIFICATE OF PUBLICATION**  
TOWSON, MD. November 30, 1989

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Nov. 30, 19 89.

THE JEFFERSONIAN,  
S. Zebe Olson  
Publisher

**CERTIFICATE OF PUBLICATION**  
TOWSON, MD. November 30, 1989

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Nov. 30, 19 89.

THE JEFFERSONIAN,  
S. Zebe Olson  
Publisher



**CERTIFICATE OF PUBLICATION**  
Office of  
**THE AVENUE NEWS**

444 Eastern Bldg.  
S.W. 2121  
November 30, 1989

**THIS IS TO CERTIFY** that "Amended development of Gerald Kestner in the matter of Petition for Zoning Variance" was published in the issue of the 1 day of Dec., 1989, successive week(s) before the 1 day of Dec., 1989. It is to say, the same was inserted in the issue of Nov., 30, 1989.

**The Avenue News Inc.**  
per publisher  
*Barbara A. Smith*

**NOTICE OF PUBLICATION**  
The following information was published in the issue of the 1 day of Dec., 1989, successive week(s) before the 1 day of Dec., 1989. It is to say, the same was inserted in the issue of Nov., 30, 1989.

**Baltimore County**  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
(410) 897-3333

**J. Robert Haines**  
Zoning Commissioner

**NOTICE OF HEARING**

The Zoning Commission of Baltimore County, by authority of the Zoning Act and regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 109 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

**Petition for Zoning Variance**  
CASE NUMBER: 90-254-A  
SIS of Eastern Avenue, 930' sq ft of Oliver Beach Road  
1213 Eastern Avenue  
15th Election District - 5th Commission  
Baltimore City, Gerald Kestner, et al  
HEARING: WEDNESDAY, DECEMBER 20, 1989 at 2:00 p.m.

Variance: To permit a 15 ft. rear yard setback (proposed addition), 0 ft. lot line setbacks (existing shade and garage) located in the closest third removed from any street, and occupying more than 50% of the third (existing shade, garage & pool) in line of 30 ft., 2-1/2 ft., farthest third, and maximum 50%, respectively.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commission will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

**J. ROBERT HAINES**  
Zoning Commissioner of  
Baltimore County

**Baltimore County**  
Zoning Commission  
Office of Planning & Zoning  
Tracking System

Property Address: 12413 Eastern Avenue (Street)  
Petitioner: Kestner (Last)  
Council District: 15  
Election District: 5  
Zip Code: 21204

Receipt Number: 077690  
Date: 12/20/89  
FEE: \$35.00  
Type: VARIANCE

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

DATE: 12/20/89 ACCOUNT: 01-615  
AMOUNT: \$35.00

RECEIVED FROM: Mr. Kestner, Inc.  
12413 Eastern Avenue (Central Ave.)  
FOR: Variance and Petition (Item #111)  
B D14\*\*\*\*\*350018 5266F

VALIDATION OF SIGNATURE OF CASHIER

**Postage**  
12413 Eastern Ave.  
Towson, Md 21204

**Ms. Kestner**  
County Office Bldg. Rm. 109  
111 West Chesapeake Road  
Towson, Md. 21204



**Baltimore County**  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
(410) 897-3333

**J. Robert Haines**  
Zoning Commissioner

**DEC 12 1989**

Re: Mr. & Mrs. Gerald Kestner  
1213 Eastern Avenue  
Baltimore, Maryland 21220

Re:  
Petition for Zoning Variance  
CASE NUMBER: 90-254-A  
SIS of Eastern Avenue, 930' sq ft of Oliver Beach Road  
1213 Eastern Avenue  
15th Election District - 5th Commission  
Baltimore City, Gerald Kestner, et al  
HEARING: WEDNESDAY, DECEMBER 20, 1989 at 2:00 p.m.

Dear Mr. & Mrs. Kestner:

Enclosed is \$129.01 is due for advertising and posting of the above.

**Baltimore County**  
Zoning Commissioner  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

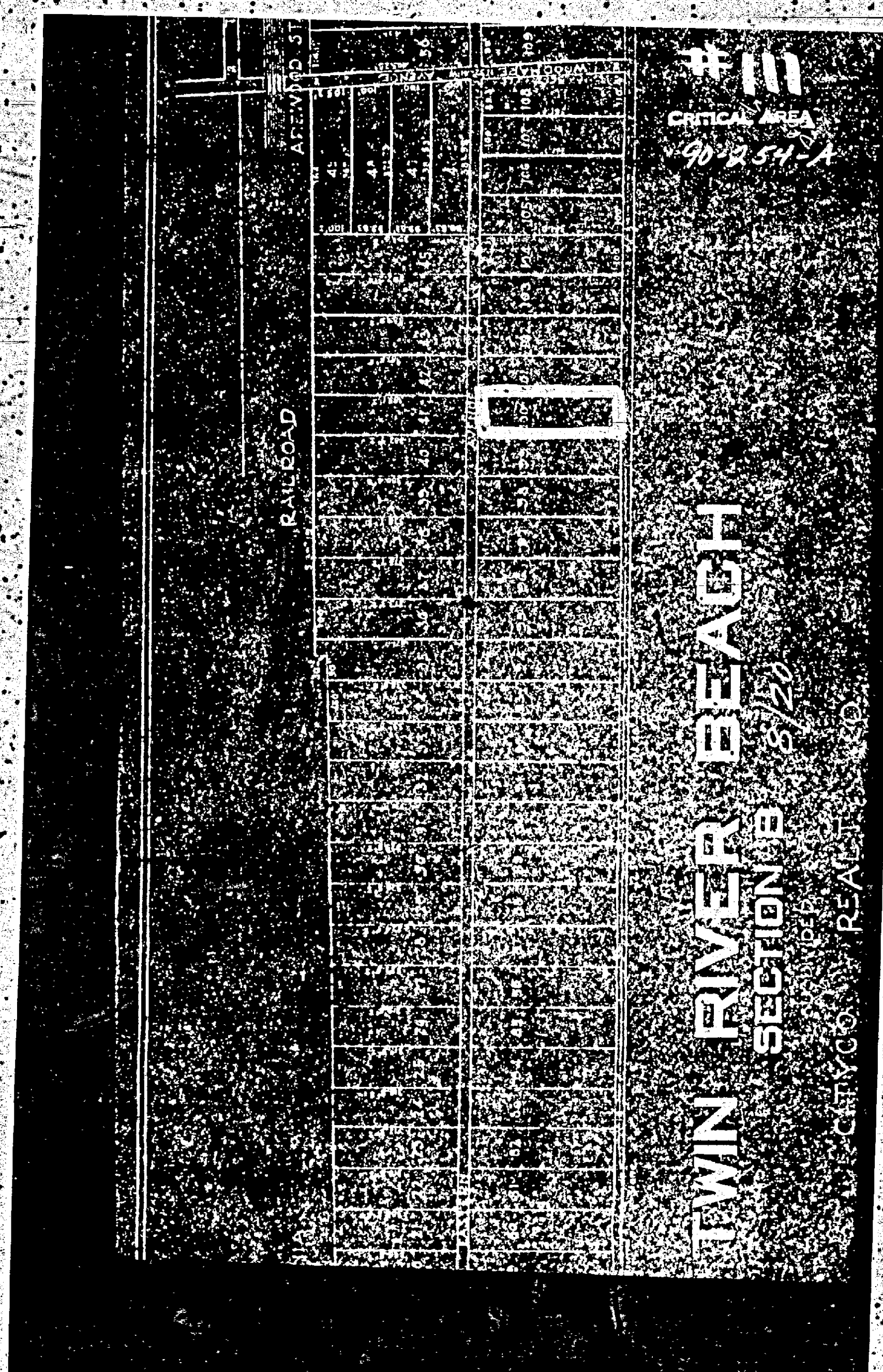
**receipt**  
Account: R-001-4150  
Number: 749  
Date: 12/20/89  
90-254-A

PUBLIC HEARING FEES  
QTY PRICE  
080 - POSTING SIGNS / ADVERTISING 1 x \$129.01  
TOTAL: \$129.01

LAST NAME OF OWNER: KESTNER

B 073\*\*\*\*\*122018 2202F

Please make checks payable to Baltimore County





Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
(301) 887-3353  
J. Robert Haines  
Zoning Commissioner

March 7, 1990

Mr. & Mrs. Gerald Kestner  
12913 Eastern Avenue  
Baltimore, Maryland 21220

RE: PETITION FOR ZONING VARIANCE  
SE/8 Eastern Avenue, 930' SW \* Oliver Beach Road  
(12913 Eastern Avenue)  
15th Election District - 5th Councilmanic District  
Gerald Kestner, et ux - Petitioners  
Case No. 90-254-A

Dear Mr. & Mrs. Kestner:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Zoning Variance has been denied in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3391.

Very truly yours,

*Ann M. Natarowicz*  
ANN M. NASTAROWICZ  
Deputy Zoning Commissioner  
for Baltimore County

AMN:bjs

cc: Chesapeake Bay Critical Area Commission  
Towson State Office Building, D-4, Annapolis, Md. 21404

DEPRM

People's Counsel

File

Dennis F. Rasmussen  
County Executive

# BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

December 14, 1989

COUNTY OFFICE BLDG.  
111 W. Chesapeake Ave.  
Towson, Maryland 21204

MEMBERS

Bureau of Engineering  
Department of Traffic Engineering  
State Roads Commission  
Bureau of Fire Prevention  
Health Department  
Project Planning  
Building Department  
Board of Education  
Zoning Administration  
Industrial Development

Mr. & Mrs. Gerald Kestner  
12913 Eastern Avenue  
Baltimore, MD 21220

RE: Item No. 111, Case No. 90-254-A  
Petitioner: Gerald Kestner, et ux  
Petition for Zoning Variance

Dear Mr. & Mrs. Kestner:  
The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

IT WOULD BE APPRECIATED IF YOU WOULD RETURN YOUR WRITTEN COMMENTS TO MY OFFICE, ATTENTION JULIE WINIARSKI. IF YOU HAVE ANY QUESTIONS REGARDING THIS, PLEASE CONTACT HER AT 887-3391.

Very truly yours,

*James E. Dyer*  
JAMES E. DYER  
Chairman  
Zoning Plans Advisory Committee

JED:jw

Enclosures

cc: Patlo Enclosures, Inc.  
224 8th Avenue  
Glen Burnie, MD 21061

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
(301) 887-3353  
J. Robert Haines  
Zoning Commissioner

Dennis F. Rasmussen  
County Executive

Your petition has been received and accepted for filing this 11th day of October, 1989.

*J. Robert Haines*  
J. ROBERT HAINES  
ZONING COMMISSIONER

Received By:

*James E. Dyer*  
Chairman  
Zoning Plans Advisory Committee

Petitioner: Gerald Kestner, et ux  
Petitioner's Attorney:

# BALTIMORE COUNTY, MARYLAND INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines DATE: December 6, 1989  
Zoning Commissioner

FROM: Pat Keller, Deputy Director  
Office of Planning and Zoning

SUBJECT: Gerald Kestner, Item 111  
Zoning Petition No. 90-254

The Petitioner requests a variance to permit a 15 ft. rear yard setback, a 0 ft. lot line setbacks (existing sheds and garage) located in the closest third removed from any street, and occupying more than 50% of that third in lieu of 30 ft., 2 1/2 ft. farthest third, and maximum 50%.

In reference to this request, staff offers no comment.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3211.

PK/JL/cwm

Baltimore County  
Department of Public Works  
Bureau of Traffic Engineering  
County Office Building, Suite 405  
Towson, Maryland 21204  
(301) 887-3564

November 9, 1989

Mr. J. Robert Haines  
Zoning Commissioner  
County Office Building  
Towson, Maryland 21204

RECEIVED  
NOV 16 1989

ZONING OFFICE

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 110, 112, 113, 114, 115, 116, 117, and 118.

Very truly yours,

*Michael S. Flanagan*  
Michael S. Flanagan  
Traffic Engineer Associate II

MSF/lab

# BALTIMORE COUNTY, MARYLAND INTER-OFFICE CORRESPONDENCE

TO: Mr. J. Robert Haines DATE: November 27, 1989  
Zoning Commissioner

FROM: Mr. Robert W. Sheasley

SUBJECT: Petition for Zoning Variance - Item 111  
Kestner Property  
Chesapeake Bay Critical Area Findings

## SITE LOCATION

The subject property is located at 12913 Eastern Avenue in the Cunningham Cove Area. The site is within the Chesapeake Bay Critical Area and is classified as a Limited Development Area (LDA).

APPLICANT'S NAME Mr. and Mrs. Kestner

## APPLICANT PROPOSAL

The applicant has requested a variance from section 1802.3.B. and 400.1 of the Baltimore County Zoning Regulations "to permit a 15 foot rear yard setback (proposed addition), 0' lot line setbacks (existing sheds and garage) located in the closest third removed from any street, and occupying more than 50% of that third (existing sheds, garage and pool) in lieu of 30 feet, 2.5 feet, farthest third, and maximum 50% respectively."

## GOALS OF THE CHESAPEAKE BAY CRITICAL AREA PROGRAM

In accordance with the Chesapeake Bay Critical Area Program, all project approvals shall be based on a finding which assures that proposed projects are consistent with the following goals of the Critical Area Law:

1. "Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands;
2. Conserve fish, wildlife and plant habitat; and
3. Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts." (COMAR 14.15.10.01.C)

## REGULATIONS AND FINDINGS

1. Regulation: "A minimum 100 foot buffer shall be established landward from the mean high water line of tidal waters, tidal wetlands, and tributary streams" (Baltimore County Code Sec. 22-213(a)).

# BALTIMORE COUNTY, MARYLAND Inter-Office Correspondence

TO: Gary Freund DATE: March 9, 1990  
Zoning Enforcement

FROM: Ann M. Natarowicz  
Deputy Zoning Commissioner

SUBJECT: Petition for Zoning Variance  
SE/8 of Eastern Avenue  
930' SW of the c/l of Oliver Beach Road  
(12913 Eastern Avenue)  
15th Election District - 5th Councilmanic District  
Gerald Kestner, et ux - Petitioners  
Case No. 90-254-A

Please investigate the subject property for compliance with the Order issued in the above-captioned matter after thirty (30) days of the date of this letter and advise me of your findings. You may recall, the property owner had filed the subject Petition and failed to provide accurate documentation as to existing improvements on the site. Their variance request was subsequently denied. Furthermore, your recent inspection of the property revealed the possibility of commercial activity taking place at this location.

If you have any questions on the subject, please do not hesitate to see me.

AMN:bjs

cc: Case File

Baltimore County  
Fire Department  
800 York Road  
Towson, Maryland 21204-2586  
(301) 887-4500  
Paul H. Reinke  
Chief

OCTOBER 9, 1989

J. Robert Haines  
Zoning Commissioner  
Office of Planning and Zoning  
Baltimore County Office Building  
Towson, MD 21204

RE: Property Owner: GERALD KESTNER  
Location: SE/8 OF EASTERN AVENUE  
Item No.: 111  
Zoning Agenda: OCTOBER 10, 1989

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1988 edition, prior to occupancy.

REVIEWER: *John J. Kelly* Noted and  
Planning Group Approved  
Special Inspection Division

*Paul H. Reinke*  
Fire Prevention Bureau

JK/KEK

OCT 10 1989